

**REMARKS**

This application has been carefully reviewed in light of the Office Action mailed May 8, 2002. To advance the prosecution of this application, Applicants have responded to each issue raised by the Examiner. Applicants respectfully request reconsideration, further examination, and favorable action in this case.

The Examiner rejects Claims 1-2, 5-7, 11, 15-16, 19-21, 25, 32, 34-37, 41-42, 46, 48-51, and 55-56 under 35 U.S.C. § 102(e) as being anticipated by European Patent Application EP0770967A2 by Schmidt et al. ("*Schmidt*"). The Examiner also rejects Claims 3-4, 8-10, 12-14, 17-18, 22-24, 26-29, 31-33, 38-40, 43-44, 46-47, 52-54, and 57-58 under 35 U.S.C. § 103(a) as being unpatentable over *Schmidt* in view of U.S. Patent No. 5,970,479 by Shepherd ("*Shepherd*"). Applicants respectfully traverse these rejections for reasons discussed below.

Applicants initially note that *Schmidt* fails to meet the requirements of 35 U.S.C. § 102(e) because *Schmidt* is a European patent application, not a United States or PCT patent application. To the extent that *Schmidt* may qualify as "prior art" against the present application under other sections of 35 U.S.C. § 102, Applicants respond as follows.

Claim 1 recites a method of multi-enterprise optimization at a buyer computer, which includes:

- accessing a forecasted demand for at least one item;
- generating one or more proposed flexible trade contracts
- using the forecasted demand for the item;
- communicating each proposed flexible trade contract to a seller computer; and
- executing a flexible trade contract created after acceptance of the proposed flexible trade contract at the seller computer.

The Examiner relies on several portions of *Schmidt* as disclosing various elements of Claim 1. For example, the Examiner cites page 28, lines 35-40 *Schmidt* as disclosing the generation of one or more proposed flexible trade contracts using forecasted demand for an item. (*Office Action, Page 2*). The Examiner also cites page 20, line 50 through page 30, line 41 of *Schmidt* as disclosing the communication of each proposed flexible trade contract to a seller

computer. (*Office Action, Page 2*).

The first portion of *Schmidt* discloses analyzing information to “evaluate service contract options.” (*Page 28, Lines 37-39*). The parameters are “then written to VMR Contract 262.” (*Page 28, Lines 39-40*).

The second portion of *Schmidt* discloses generating and refining “replenishment requirements” using the “VMR Contract 262.” (*Page 28, Lines 44-46*). The replenishment requirements are then used to generate a “Replenishment Schedule report 280.” (*Page 28, Lines 46-47 and 52-53*). After that, the schedule is “written to VMR data 272.” (*Page 28, Lines 47-48*).

Applicants note that the cited portions of *Schmidt* lack any disclosure, teaching, or suggestion of “communicating” the VMR Contract 262 or the Replenishment Schedule report 280 “to a seller computer” as recited in Claim 1. In fact, *Schmidt* simply discloses that both sets of information are stored in different data structures. *Schmidt* contains absolutely no disclosure, teaching, or suggestion of communicating either set of information from a buyer computer to a seller computer.

Applicants also note that the Examiner improperly relies on different sets of information as representing a “proposed flexible trade contract.” First, the Examiner relies on the creation of one set of information (VMR Contract 262) as disclosing the generation of one or more proposed flexible trade contracts. Second, the Examiner relies on the creation of a different set of information (Replenishment Schedule report 280) as disclosing the communication of the proposed flexible trade contract. Applicants respectfully submit that this is improper and that the Examiner cannot point to the creation of two different sets of information as disclosing both the generation and communication of “one or more proposed flexible trade contracts.” Applicants also respectfully note that while the Replenishment Schedule report 280 may be generated using the VMR Contract 262, *Schmidt* fails to disclose, teach, or suggest that the contents of the VMR Contract 262 are contained in Replenishment Schedule report 280 and that

the Replenishment Schedule report 280 is communicated to a seller computer.

These portions of *Schmidt* lack any disclosure, teaching, or suggestion of “generating one or more proposed flexible trade contracts” and “communicating each proposed flexible trade contract to a seller computer” as recited in Claim 1. In particular, the cited portions of *Schmidt* lack any disclosure, teaching, or suggestion that the “VMR Contract” is “communicat[ed] ... to a seller computer” as recited in Claim 1. Similarly, the cited portions of *Schmidt* lack any disclosure, teaching, or suggestion that the “Replenishment Schedule report” is “communicat[ed] ... to a seller computer” as recited in Claim 1. As a result, these portions of *Schmidt* fail to disclose, teach, or suggest the limitations recited in Claim 1.

In addition, the Examiner cites page 30, line 43 through page 32, line 38 of *Schmidt* as disclosing the execution of a flexible trade contract created after acceptance of the proposed flexible trade contract at the seller computer. (*Office Action, Page 3*). This portion of *Schmidt* discloses evaluating an already-established VMR program. A VMR program represents a program where a vendor manages the product inventory of the vendor's customer, rather than having the customer decide when to place orders for the product. (*Page 28, Lines 54-58*). *Schmidt* states that “[a]fter a VMR program has been setup and the execution started,” the program can be monitored. (*Page 30, Lines 45-46*).

As described above, the Examiner improperly relies on both the VMR Contract 262 and the Replenishment Schedule report 280 as representing a “proposed flexible trade contract.” However, even if this was proper, the third portion of *Schmidt* cited by the Examiner lacks any disclosure, teaching, or suggestion that the VMR program is executed after acceptance of either the VMR Contract 262 or the Replenishment Schedule report 280. In fact, because *Schmidt* contains no disclosure, teaching, or suggestion of communicating the VMR Contract 262 or the Replenishment Schedule report 280 to a seller computer, the VMR program cannot be executed after “acceptance” of the VMR Contract 262 or the Replenishment Schedule report 280 “at the seller computer” as recited in Claim 1. As a result, this portion of *Schmidt* also fails to disclose, teach, or suggest the limitations recited in Claim 1.

At a minimum, with respect to Claim 1, *Schmidt* fails to disclose, teach, or suggest:

- generating one or more proposed flexible trade contracts using the forecasted demand for the item;
- communicating each proposed flexible trade contract to a seller computer; and
- executing a flexible trade contract created after acceptance of the proposed flexible trade contract at the seller computer.

For similar reasons, with respect to Claim 15, *Schmidt* at a minimum fails to disclose, teach, or suggest:

- receiving one or more proposed flexible trade contracts from a buyer computer;
- accepting the proposed flexible trade contract to create a flexible trade contract; and
- executing the flexible trade contract.

Regarding Claim 29, the Examiner cites *Schmidt* as disclosing most elements of Claim 29. *Shepherd* is cited by the Examiner as disclosing the generation of a proposed contract using forecasted demand for an item. (*Office Action, Page 9*). Even if the Examiner was correct, *Shepherd* still fails to disclose, teach, or suggest all of the limitations missing from *Schmidt* with respect to Claim 1 discussed above. As a result, the proposed combination of *Schmidt* and *Shepherd* at a minimum fails to disclose, teach, or suggest:

- a negotiation module operable to “generate one or more proposed flexible trade contracts” and “communicate the proposed flexible trade contract to a seller computer”; and
- an execution module operable to “execute a flexible trade contract created after acceptance of the proposed flexible trade contract at the seller computer.”

With respect to Claim 45, *Schmidt* at a minimum fails to disclose, teach, or suggest:

- a negotiation module operable to receive one or more proposed flexible trade contracts from a buyer computer and accept the proposed flexible trade contract to create a flexible trade contract; and
- an execution module operable to execute the flexible trade contract.

Therefore, the proposed combination of *Schmidt* and *Shepherd* fails to disclose, teach, or suggest all limitations of Claims 1, 15, 29, and 45 as required by 35 U.S.C. §§ 102, 103. Furthermore, the dependent claims of this Application recite numerous additional features further distinguishing the present invention over the prior art.

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claims 1, 15, 29, and 45, and Claims 2-14, 16-28, 30-44, and 46-58 depending therefrom.

**CONCLUSION**

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request reconsideration and full allowance of all pending claims.

If the Examiner believes a telephone conference would advance prosecution of this case, the Examiner is invited to call the undersigned attorney for Applicants, Christopher W. Kennerly, at the convenience of the Examiner. Mr. Kennerly may be reached at 214-953-6812.

Applicants do not believe that any fees are due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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